IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 182 OF 2005.

S t a t e. ... Applicant.

Versus

1. Chandrakant Zalmi,
   s/o Vithu Zalmi,
   r/o Mathwaddo, Pilgao,
   Bicholim.

2. Mahadev Kavelkar,
   s/o Ladko Kavlekar,
   r/o Mathwado, Pilgao,
   Bicholim.

3. Rama Kavlekar,
   s/o Dev Kavlekar,
   r/o Mathwaddo, Pilgao,
   Bicholim.

4. Tukaram Vaigankar,
   S/o Keshav Vaigankar,
   r/o Mathwaddo, Pilgao,
   Bicholim.

5. Zailo Kavlekar,
   s/o Sazro Kavlekar,
   r/o Mathwaddo, Pilgao,
   Bicholim, Goa.

6. Pandurang Kavlekar
   s/o Vishnu Kavlekar,
   r/o Mathwaddo, Pilgao,
   Bicholim, Goa (Expired).

7. Bambdo Sonshikar,
   S/o Sukhdo Sonshikar,
   R/o Mathwaddo, Pilgao,
   Bicholim, Goa.

8. Babal Vargakar,
s/o Gopi Vargakar,
r/o Sarmanas, Pilgao,
Bicholim, Goa.

9. Harischandra Chavan,
s/o Ladu Chavan,
R/o Sarmanas, Pilgao,
Bicholim, Goa.

10. Vasudev Zalmi,
s/o Sazro Zalmi,
r/o H. No. 305,
Magvaddo, Pilgao,
Bicholim, Goa.

11. Dyaneshwar Zalmi,
S/o Dattaram Zalmi,
R/o H. No. 237,
Mathwaddo, Pilgao,
Bicholim, Goa. .... Respondents.

Ms. W. Coutinho, Public Prosecutor for the State/Applicant.

Ms. K. Sambari, Advocate for the Respondents.

CORAM: N. A. BRITTO, J.

DATE: 15th SEPTEMBER, 2005.

ORAL ORDER:

The State has sought leave to appeal against the acquittal of the respondents/accused under Sections 143, 147, 148, 323, 325, 427, 506 (ii) r/w 149 I.P.C. by Judgment/Order dated 23.2.05 of the learned J.M.F.C., Bicholim in C.C. No.16/S/2001/B.

2. It appears that upon the complaint filed by the injured P.W.6 Suresh

Chodankar, a case came to be registered against the present accused and a charge-sheet filed against them for having committed the said offences. The copy of the complaint/F.I.R. (Exh.27) shows that the same was filed against the Chairman Chandrakant Zalmi/A-1 and committee members of Ambecazan Committee.

3. As per the version given by the said P.W.6 Suresh Chodankar, which has remained uncorroborated, it appears that the said Chodankar on or about 19.1.2000 had taken sluice gate/manas on auction situated at Sarmanas for a period of one year and had paid the first instalment towards the said auction of Rs.8500/- and then got an agreement executed which he claimed he had handed over to the accused No.1. According to him he had a hut at the said sluice gate where two of his employees namely P.W.2 Manohar Pole and P.W.3 Pundalik Shirodkar were staying and he used to visit the said sluice gate sometimes. According to him in February of that year, the fifth and sixth doors of the said sluice gate were removed by somebody at the time when he was away at Mumbai as his wife was not keeping well and when he returned on or about 10.2.2000, he had received a notice from the Mamlatdar in respect of the missing of the said doors as water had entered into the paddy fields. P.W.6 Chodankar stated that he had filed a Civil Suit against the Chairman (A-1) and other Committee members and had obtained an order of temporary injunction in his favour.

The incident appears to have taken place on 4.4.2000 soon after the Mamlatdar had visited the place of the sluice gate and left after speaking to the said Chairman and other members of the Committee. According to P.W.6 Chodankar, there were 30 to 35 persons present when he was assaulted all over his body with bamboo sticks, 'piddes', kicks and slaps, as a result of which his left leg was fractured and his tooth was dislocated and he also had injuries on his face.

4. The injuries on P.W.6 Chodankar have been deposed to by P.W.4 Nagvenkar who had examined P.W.6 Chodankar at P.H.C., Bicholim and who after finding that there were five injuries which have been described by him both in his medical certificate (Exh.P.W.4/A) as well as in his deposition had referred him to Goa Medical College where he was examined by P.W.5 Dr. Barreto on 5.4.02 and the latter found that P.W.6 Chodankar had a fracture of the left tibia which as per the history given by the patient was due to the alleged assault. According to P.W.5 Dr. Baretto, he had carried out an open surgery with internal fixator on 6.4.2000 and he was discharged on 11.4.2000. No opinion was solicited from P.W.5 Dr. Baretto as to the cause of the said injury. As per P.W.4 Dr. Nagvekar, the said injuries could have been caused by 'piddes' as well as dandas which were blunt objects, but it appears that no weapon was shown to P.W.4 (Dr. Nagvekar) to elicit his opinion whether the said injuries were caused by the

dandas or 'piddes' allegedly used since it does not appear that any dandas or 'piddes' were attached either from the scene of offence or at the instance of the accused by the investigating agency.

5. If, according to P.W.6 Chodankar there were about 30 to 35 persons at the time of the incident, according to P.W.2 Manohar there were about 40 to 50 persons gathered there and as per P.W.2 Manohar Pole there were about 150 persons and it appears that there was a meeting of about 150 agriculturists prior to this incident and it is quite probable that some of these people who had assaulted the complainant. In fact, P.W.2 Manohar Pole and P.W.3 Pundalik Shirodkar who were the workers of P.W.6 Chodankar and who were residing in the hut near the sluice gate did not at all support the case of the said P.W.6 Chodankar and in fact P.W.2 Manohar Pole went to the extent of stating that the persons who assaulted the complaint-P.W.6 Chodankar were not before the Court. He was cross-examined by the prosecution, but without any benefit to its case. P.W.3 Pundalik stated that there were many people at the time of the incident which had taken place during the time of Shigmo in April, 2000 and at that time it was getting dark. The complainant/P.W.6 Chodankar himself has not given the genesis of the incident namely as to how it began and at least to say as to who assaulted him first. Although P.W.6 Chodankar stated that he had filed a Civil Suit and obtained an order of temporary injunction in

his favour, P.W.6 chose not to produce the said order granted in his favour to support his version. Besides stating generally that the accused assaulted him with bamboos, sticks, 'piddes', kicks and slaps, P.W.6 did not at all state as to which of the accused assaulted him and in what manner. It is quite probable that on account of the darkness and largeness of the crowd that had gathered there, P.W.6 Chodankar was unable to identify any of his assailants and because of his enmity with the Chairman and other Committee members of the said Kazan Committee that P.W.6 filed a complaint against them for assaulting him. Although P.W.6 Chodankar stated that subsequently he had found out the names of the members of the Tenants' committee, P.W.6 chose not to produce any official record to show as to who were the members of the said Committee. It appears that P.W.6 was not at all aware as to who were the members of the said Committee since at no stage he gave their names either at the time of the investigation to the Investigation Officer or in his evidence before the Court. The prosecution also did not examine any independent witnesses from the houses which were in the locality and even the said workers of P.W.6 Chodankar who were examined did not support the version of P.W.6 Chodankar which also otherwise does not inspire any confidence as regards the complicity of the accused having participated in the assault against him. The learned J.M.F.C. was certainly justified in giving the benefit of doubt to the accused and acquitting them of the said offences. This is not a fit case

to grant leave to appeal, to the prosecution.

6. The Application, therefore, is hereby rejected.

N. A. BRITTO, J.

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